

Department of Public Health
and Human Services

Section:
NONFINANCIAL CRITERIA

FOOD STAMP PROGRAM

Subject:
Eligible Alien Status

Supersedes: FS 301-2 (04/01/05), Bulletin FS 043 (05/31/06)

References: 7 CFR 273.1(b)(7)(i); 7 CFR 273.2(b)(1)(iii); 7 CFR 273.2(f)(1)(ii); 7 CFR 273.4; 7 CFR 273.11(c)(3)

GENERAL RULE -- An individual who is not a U.S. citizen or a U.S. National must have their alien status verified to be included in the assistance unit.

A required member of the filing unit, who is not a U.S. citizen, a U.S. National, or does not meet 'eligible alien' status, can choose not to be included in the assistance unit by declaring to be an 'ineligible alien'; code 'DS' on FS SEPA.

Alien visitors, tourists, diplomats and students, who enter the U.S. temporarily with no intention of abandoning their residence in a foreign country, are not eligible for food stamp benefits under any circumstances.

**'ELIGIBLE
ALIEN'**

Individuals must meet food stamp 'Qualified Alien Categories' (pages 2-4) **and** one of several 'Special Food Stamp Criteria' (pages 4-6) to be determined an 'eligible alien' for the Food Stamp Program.

**ADDITIONAL
ALIEN STATUS
NOT REQUIRED**

Individuals meeting one of the following criteria are **NOT** required to meet any additional alien status criteria. They do have to meet all other food stamp non-financial and financial eligibility requirements to be included in the assistance unit.

1. An individual lawfully residing in the U.S. and was a **member of a Hmong or Highland Laotian tribe** at the time the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975. Also, the following family members:
 - a. the spouse, or unmarried surviving spouse of the Hmong or Highland Laotian who is deceased; or,
 - b. an unmarried dependent child (including legally adopted children) of the Hmong or Highland Laotian under the age of 18, or if a full-time student under the age of 22; or,

- c. an unmarried child (including legally adopted children) under the age of 18 or, if a full-time student under the age of 22 of the **deceased** Hmong or Highland Laotian provided the child was dependent upon them at the time their death; or,
- d. an unmarried disabled child (including legally adopted children) age 18 or older if the child was disabled and dependent on the Hmong or Highland Laotian person prior to the child's 18th birthday.

2. **A North American Indian** (at least 50% Indian blood) born in Canada to whom the provisions of Section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply. This does not include a spouse or child of the Indian, nor a non-citizen whose membership in an Indian tribe or family is created by adoption unless the persons are also of at least 50% Indian blood.

This provision was intended to address Canadian born North American Indians entitled to cross the U.S. border into Canada or Mexico.

NOTE: Acceptable types of documentation include birth or baptismal certificates issued on a reservation, tribal records, a letter from the Canadian Department of Indian Affairs, a Canadian Certificate of Indian Status (Form IA-2360), or school records.

3. **A member of a federally acknowledged Indian Tribe** in the contiguous 48 states and Alaska. These tribes are listed in Section 4 (e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 (e)). All regional and central office policy specialists have a copy.

Example: An individual born in Germany whose father is a Crow tribal member and mother is a German citizen. The individual has verification he is an enrolled tribal member and has not yet been granted alien status by U.S. Citizenship and Immigration Service (USCIS). This individual's alien status verification can be waived due to being a tribal member. All other financial and non-financial requirements must be met.

**'QUALIFIED
ALIEN
CATEGORIES'**

A 'qualified alien' is an alien, who at the time he/she applies for or receives food stamp benefits, meets one of the 'qualified categories' listed below and one of the 'Special Food Stamp Criteria' (pages 4-6) to be considered an eligible alien.

EXCEPTION:

A 'qualified alien' who meets a 'qualifying category' of a refugee, a victim of human trafficking, a deportee, an alien granted asylum, or an alien having a Cuban or Haitian entrant status, **OR** meets any of the three categories for exception (pages 1-2), does not have to meet one of the 'Special Food Stamp Criteria' to be determined an 'eligible alien'.

1. **Lawfully Admitted to the United States for Permanent Residence (LAPR)** - an alien granted status as a LAPR by the Immigration and Nationality Act (INA);
2. **Refugee** - an alien admitted to the U.S. under Section 207 of (INA);
3. **Victims of human trafficking** - an alien in the U.S. because they are victims of human trafficking **or** minor children, spouses and in some cases the parents and siblings of victims of severe trafficking are considered refugees by the Office of Refugee Resettlement (ORR);

NOTE:

ORR issues a certification document identifying the individual as a victim of human trafficking or eligible relatives of trafficking victims.

Trafficking victims verification toll free number is 1-866-401-5510.

4. **Granted asylum** - an alien granted asylum under Section 208 of the INA;
5. **Deportation withheld** - an alien who had deportation withheld under Section 243 (h) of the INA;
6. **Cuban and Haitian entrant status** - an alien granted status as a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
7. **Parolee** - an alien who has been paroled under Section 212 (d) (5) of the INA for at least one year;
8. **Conditional entry** - an alien granted conditional entry under Section 203 (a) (7) of the INA in effect prior to 04/01/80; and,

9. **Battered** - an alien who is a battered spouse, battered child (age 18 or younger), or parent or child of a battered individual with a petition pending under Section 204 (a)(1)(A) or (B) or 244 (a)(3) of the INA.

**'SPECIAL FOOD
STAMP CRITERIA'**

A 'qualified alien' who is not a refugee, a victim of human trafficking, a deportee, an alien granted asylum, or an alien having Cuban or Haitian entrant status **OR** does not meet any of the three categories for exception (pages 1-3), must meet one of the following 'Special Food Stamp Criteria' to be determined an 'eligible alien'.

1. **'Qualified Alien'** - effective April 1, 2003 an alien who has lived in the U.S. as a 'qualified alien' for a period of five years or longer from the date of entry such as a LAPR, parolee, conditional entry, or battered;
2. **Amerasian Immigrant** - an alien admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988;
3. **Military connection** - *an alien* who meets one of the following:
 - a. A veteran (Title 38, Section 101, U.S.C.) with an honorable discharge and not on account of alienage;

NOTE: Acceptable documentation of veteran status is the original copy of the veteran's discharge papers issued by the branch of service the alien was a member.

If there has been more than one discharge, the most recent one will be the only one used to determine if this requirement has been met.

- b. On active duty other than active duty for training, in the U.S. Armed Forces; or,

NOTE: Acceptable documentation of active military status is the original copy of the alien's current orders posting the alien to a military base.

- c. The spouse or unmarried dependent child (age 18 or younger) of the *alien veteran* in (a) or (b) above, or the unmarried surviving spouse of a deceased *alien veteran*.

4. **Child** - effective October 1, 2003 a child currently under 18 years of age who is lawfully residing in the U.S.;
5. **Disabled** - effective October 1, 2002 an alien receiving benefits or assistance for blindness or disability and lawfully is residing in the U.S.;
6. **Aged** - an alien lawfully residing in the U.S. on August 22, 1996 who was born on or before August 22, 1931; or,
7. **Lawfully Admitted to the United States for Permanent Residence (LAPR)** - a LAPR who also meets 40 quarters of work criteria.

The individual must provide proof of earnings of 10 years or more with employer statements, income tax forms, wage stubs, etc., or obtain verification by requesting the information from the regional Social Security Administration (SSA) office. The OPA Case Manager can access Montana's State Verification and Exchange System (SVES) interface with SSA to establish the 40 quarters of work for the LAPR 'qualified alien'.

A maximum of four credits may be earned in a year by each individual. Credits will be credited only after the calendar quarter has ended. Calendar quarters mean the four calendar months ending March 31st, June 30th, September 30th, and December 31st of any year.

No work quarters are creditable for any period beginning after December 31, 1996, if the alien (or the parent or spouse) received any federal means-tested benefits or received food stamps during the period the work quarters were earned. Federal means-tested benefits are TANF Cash, and Tribal TANF, or BIA Tribal Assistance.

NOTE: Any earnings of a non-citizen for work legally performed in the U.S. are used when calculating quarters of work. This includes earnings not creditable for Social Security benefits. The OPA Case Manager determines if the non-citizen has earned a quarter of work using the 'National Average Wage Index Needed to Earn One Quarter of Coverage' on page 9.

Any earnings of a non-citizen for work performed in another country as long as the work is creditable for Social Security benefits are included.

One quarter of work can be counted for more than one person (e.g., Mom, dad and child apply for assistance. Mom and dad worked the third quarter of 2000. Since both spouses worked the quarter, all three individuals can count two quarters for 03/00 - one from mom and one from dad). Technically, it is possible to earn 40 quarters in only 20 quarters if both spouses worked the same 20 quarters.

A qualifying quarter of work is credited if earned by:

- a. The alien;
- b. The alien's living or deceased parents (natural, adopted or stepparents) while the alien was under age 18 (including quarters earned before his birth regardless of his current age); and/or,
- c. The alien's spouse during their marriage if the marriage continues or if the spouse is deceased.

Information on the alien's quarters of work may be obtained by accessing the SSA interface with TEAMS by inquiring through the RECI screen and entering a 'Y' in the 'SSA 40Q' field for the individual. If the alien does not have the required 40 quarters of their own, the OPA Case Manager needs to access another family member's information to make up the difference or verify earnings by another method such as wage stubs.

NOTE: Only the alien's parents or spouse's information may be accessed because a child's quarters or a sibling's quarters cannot be attributed to a parent or a sibling.

VERIFICATION ALIEN STATUS

If an individual's citizenship or status as a non-citizen national is questionable, the OPA Case Manager must verify the member's citizenship or non-citizenship national status by applying *either* item 2 or 3. Alien status must always be verified whether questionable or not, by applying item 1:

1. Alien status verification through USCIS, provided by:

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- a. Completing USCIS Form G-845S 'Document Verification Request' and attaching copies of the documentation of immigration status provided by the alien applicant; and,
 - b. Submitting Form G-845S (attaching copies of both sides of the documentation provided) to:

National Records Center/SAVE
150 Space Center Loop
Lee's Summit, MO 64064

NOTE: If item #12 or item #16 in the USCIS Response section of Form G-845S is marked by the Status Verifier, terminate or deny assistance for the individual using the following legal cites: P.L. 104-193, Title IV, Section 400-431.

All other USCIS responses indicate valid documents. Benefits may continue if all other eligibility criteria are met. Document the results of USCIS verification in case note.

2. Participation in another program if verification of citizenship or non-citizen national status was obtained for that program; **OR**,
3. If the household cannot obtain the forms of verification listed in #1 or #2, and the household can provide a reasonable explanation as to why verification is not available, the OPA Case Manager must accept a signed statement, under penalty of perjury, from a third party indicating a reasonable basis for knowledge the individual in question is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud.

SPONSORED ALIEN FS 301-3

TEAMS CODING An 'eligible alien'; code 'IN' on FS SEPA; code 'EA' in CIT field on RECI. An 'ineligible alien' or an alien declaring 'ineligible alien' status; code 'DS' on FS SEPA; code 'IA' in CIT field on RECI.

INELIGIBLE ALIEN RESOURCES, INCOME AND EXPENSES The resources of an 'ineligible alien' are countable in their entirety. Income and expenses of the ineligible alien are prorated among the remaining household members. Income and expenses must be coded against the ineligible alien or income and expenses will not be prorated; code 'DS' on FS SEPA.

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EXCEPTION: A household is allowed the **full appropriate mandatory utility allowance** if the individuals who share the utility expense(s) are not in the food stamp assistance unit because they are an ineligible alien, Able Bodied Adults Without Dependents (ABAWD) disqualified, or SSN disqualified coded 'DS' or are disqualified coded 'DQ' or 'DF' but are otherwise required household members. This also applies to households with an ineligible student.

REPORTING ILLEGAL ALIENS

The Office of General Counsel (OGC) provides two criteria to be used in determining when to report illegal aliens to USCIS:

1. There is an admission by the applicant, another household member, or the household's authorized representative that illegal alien(s) are present in the household.
2. USCIS documents presented by the household during the application process are determined to be forged.

During the certification or recertification process, the OPA Case Manager may discover other information which indicates someone in the household is an illegal alien. In order to determine that a member or members of that household are in fact illegal aliens based on this other information; it must be reported to USCIS.

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NON-CITIZEN QUARTERS OF WORK CALCULATION

| <i>National Average Wage Index Needed to Earn One Quarter of Coverage</i> | | | |
|---|--------------------|--------|--------------------|
| YEAR | AMOUNT OF EARNINGS | YEAR | AMOUNT OF EARNINGS |
| 1975 | \$50 | 1991 | \$540 |
| 1976 | 50 | 1992 | 570 |
| 1977 | 50 | 1993 | 590 |
| 1978 | 250 | 1994 | 620 |
| 1979 | 260 | 1995 | 630 |
| 1980 | 290 | 1996 | 640 |
| 1981 | 310 | 1997 | 670 |
| 1982 | 340 | 1998 | 700 |
| 1983 | 370 | 1999 | 740 |
| 1984 | 390 | 2000 | 780 |
| 1985 | 410 | 2001 | 830 |
| 1986 | 440 | 2002 | 870 |
| 1987 | 460 | 2003 | 890 |
| 1988 | 470 | 2003 | 890 |
| 1989 | 500 | 2004 | 900 |
| 1990 | 520 | 2005 | 920 |
| 1991 | 540 | ≥ 2006 | 970 |
| 1992 | 570 | | |
| 1993 | 590 | | |
| 1994 | 620 | | |
| 1995 | 630 | | |

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